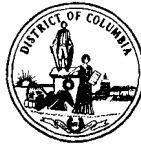


GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13496, of St. John's Baptist Church, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.41 to use part of the first floor and all of the second floor of the subject premises as a day care center consisting of fifty students and five staff members and for a variance from the off-street parking requirements (Sub-section 7202.1) in an R-1-B District at the premises 6343 - 13th Street, N.W., (Square 2944, Lots 807 and 808).

HEARING DATE: June 17, 1981
DECISION DATE: July 1, 1981

FINDINGS OF FACT:

1. The subject site is located at the southeast corner of the intersection of 13th and Tuckerman Streets, N.W. and is known as premises 6343 - 13th Street, N.W. It is in an R-1-B District.

2. The site consists of two contiguous lots which combined create a through lot with frontage on both 13th Street and Piney Branch Road to the west and east, respectively. The northern property line runs parallel to Tuckerman Street. Both lots combined consist of 44,544 square feet of land area. Lot 807, the eastern most lot, is vacant of structures and is covered with grass. Lot 808 is improved with a two story red brick church building with a rear addition and parking pad.

3. The site is located in the Brightwood neighborhood. The site is surrounded by single family detached dwellings in the R-1-B District on its north, east and south sides. Across Piney Branch Road to the east are businesses in the C-2-A District.

4. A Certificate of Occupancy No. B101414, dated March 5, 1977, was issued to the subject Church to use the first and second floors of the subject building as a religious services church seating 200 persons, Sunday school, second floor.

5. The subject building is known as St. John United Baptist Church and is presently utilized as a church for religious worship and related religious activities. The building has a first and second floor. Located on the first floor is a church, a fellowship hall, a chapel, a kitchen, restrooms, offices, and storage areas. Located on the second floor are classrooms, offices, and restrooms. The existing religious services and activities held at the church are conducted normally after 7:00 p.m. on week-days and on Saturday and Sunday. Those activities would not conflict with the operation of a child development center.

6. The applicant's intended use of the building, in addition to the operation of church services and activities, is to institute a child development center utilizing the second floor, the kitchen on the first floor, and the fellowship hall on the first floor as an indoor recreation area during inclement weather.

7. The proposed center will not be operated by the church. A corporation is to be set-up consisting of members of the church who will operate the center. Contributions from the members of the Corporation are anticipated to meet the beginning costs of the proposed Center. The Center will lease the property from the church. Further costs are to be met by the enrollees of the Center.

8. The applicant proposes a maximum of fifty children aged from under two years to fourteen years. There is no minimum enrollment. The hours of operation will be from 7:00 a.m. to 6:00 p.m., Mondays through Friday. There will be infant programs for those enrollees under two years, a child care program for those between two and five years and before and after school programs of tutoring for those attending other schools. No permanent staff has yet been selected. Its number will depend upon the enrollment. The staff can consist of salaried staff and volunteers.

9. There is off-street parking located at the rear of the church off 13th Street. There are some few other parking spaces on the Tuckerman Street side of the site.

10. The applicant proposes to construct an outside play area on the Tuckerman Street site. It will be landscaped. The site was chosen because there are no residences on the south side of Tuckerman Street that abut the church.

11. The applicant testified that 2,000 thousand flyers were sent to the immediate neighborhood within a radius of four blocks. Eleven responses were received, ten of which were in favor of the proposal and one opposed. Several of the aforementioned replies requested infant care programs.

12. The representative of the applicant testified that he was aware of other day care centers in the neighborhood. He argued that such did not provide infant care, tutoring, and foreign language instruction. He also testified that these other day care centers had started with an enrollment much less than their maximum goal.

13. The Office of Planning and Development, by report dated June 18, 1981, recommended that the application be denied on the grounds that the applicant had not met its burden of proof in meeting the requirements of Paragraph 3101.41(c) of the Zoning Regulations, which requires that the use will be reasonably necessary or convenient to the neighborhood which it is proposed to serve. The OPD noted the existence of child care centers located in close proximity to the subject site, namely the Wee Care Center at 14th Street and Whittier Street, in an R-5-A zone; the Learning Book Child Center at 6600 Georgia Avenue, in an R-5-B zone, the Howard Sherman Pre-school, at Georgia Avenue and Piney Branch, in an R-2 zone, and the Catholic Church Day Care at Georgia Avenue and Peabody Street, in a C-2-A zone. The OPD noted that it was advised that all of these centers were operating below their capacity. The OPD further noted the lack of response to the proposed use from the neighborhood, eleven out of 2000 flyers. The OPD at the public hearing testified that the fact that the above facilities did not have an infant program would not have altered its recommendation. The Board concurs in the OPD recommendations.

14. The Chairman of Directors of the subject church testified in favor of the application on the grounds that the church was under-utilized, considering its physical facilities. The church wished to involve the community to use its facilities with programs that would benefit the neighborhood. She testified that, in the past, four other programs had been started but not continued. She would not speak to the subject proposed use since the operation of it would not be controlled by the church. The Director of the Academic Enrichment Center which is within approximately four blocks of the subject site testified in favor of the application. Such Center has no infant program but has the other programs proposed by the applicant. The Center has been in operation for two years. It is not yet financially successful. It has not yet reached its anticipated enrollment. She testified that the competition would be healthy.

15. The Brightwood Civic Association and several home owners and residents in the immediate area opposed the application. A petition of some 150 signatures in opposition was submitted to the record. The common grounds for the opposition were a lack of need for the proposed use, traffic impact and noise and a use contrary to the character of the neighborhood. They testified that there are numerous vacancies at established child care centers in the immediate area. For example, Howard Child Care Center at Piney Branch Road and Underwood Street, two blocks from the church, reports a capacity of 135 youngsters with an actual enrollment of eighty. This facility could accommodate an additional fifty-five children. The Director of the Wee Care Youth Academy at 6700 - 14th Street advised that while her capacity is fifty, this facility had never operated at capacity.

They listed two other facilities not mentioned by the OPD, namely the Tiny Tot Day Care Center at 801 Rock Creek Church Road and the Highway Day Care Center at 5605 Colorado Avenue. It was the opponent's belief that these and other nearby facilities have been in existence for a number of years and have for a long while been below the permissible and desired enrollment level. They also testified that many of the residents of the immediate area are middle-aged and/or retired people without plans to move. They do not have children of the ages proposed for the Center. The residents are also gainfully employed and/or retired persons who are not interested in any of the few jobs the Center might create.

16. As to the traffic impact, there was testimony that both 13th Street and Tuckerman Street permit parking on either side. There is no parking during certain times of the peak hours of traffic. Thirteenth Street is used by commuters. There is a stop sign in front of the immediate site which helps slightly. The dropping off and picking up of children would cause double parking. The twenty to fifty cars initially, with the prospect of a capacity of 125, would create a traffic problem for the residential community. There was further evidence that persons in the immediate vicinity of St. John have already complained about traffic congestion and parking problems during religious services at St. John's. With a child development center opening at 7:00 a.m. and closing at 6:00 p.m. daily, it was feared that the annoyance to residents will occur on a daily basis, with the noise of horns, cheerful goodbyes and/or crying and car doors slamming, starting early in the morning and beginning again in the evening.

17. The Brightwood Community has consistently opposed the granting of zoning variances which would permit businesses to be established within its residential area. If this special exception is granted it would set a precedent making it easier for other businesses to obtain such consideration. The community should remain residential, while businesses are confined to the Georgia Avenue commercial corridor. The community sees the proposed use as a business.

18. Advisory Neighborhood Commission - 4A testified at the public hearing in opposition to the application on the grounds that there was no need demonstrated for the facility, the community will be adversely affected by the traffic and parking problems the Center will generate and that the subject community of residents who are over forty years and/or retired would not benefit from the proposed use. The Board is required by statute to give great to the issues and concerns of the ANC but only when the recommendation of the ANC is in writing, and submitted to the record. No such written recommendation was submitted to the record.

19. In addressing the concerns of the opposition, the Board concurs that the applicant has failed to establish a need for the proposed use in the subject community. The applicant has also failed to address by persuasive evidence that the proposed use is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or other objectionable conditions. The Board also finds that the applicant's plans are premature. The program proposed has not been sufficiently developed as to curriculum, staff, parking and supervision. The proposed program is not geared to the immediate community.

20. The applicant, by letter of June 17, 1981, suggested that the report of the Office of Planning and Development was not a fair and unbiased report since the preparer had an uncle residing two blocks from the subject site who had received one of the flyers the applicant distributed and that the preparer himself lived within ten blocks of the site. The Chair determined that the preparer never lived in the neighborhood and had no personal financial interest in the outcome of the proceedings. The Chair determined that the OPD report represented the official position of the OPD, that although drafted by an individual it was submitted through the normal process of the OPD and signed by the Director of the Plan Implementation Division on behalf of the Assistant City Administrator for Planning and Development. The report was an official report and not a personal opinion of the preparer. The Board ruled that there was no conflict of interest.


CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires that the applicant establish by probative evidence, that it has met the requirements of Paragraph 3101.41 of the Zoning Regulations. The Board concludes that the applicant has not met the burden of proof of Paragraph 3101.41(c) as evidenced by Finding Nos. 13, 15, 16 and 19. This is dispositive of the application. The Board need not consider the other sections of Paragraph 3101.41. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 4-1 (Charles R. Norris, William F. McIntosh, Douglas J. Patton and Connie Fortune to DENY; Ruby B. McZier to GRANT by PROXY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 14 SEP 1981.

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UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."